

Timmerman



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: The Saxon Corporation
File: B-232694, B-232715, B-232716, B-232732, B-232833
Date: January 9, 1989

DIGEST

1. Protest that solicitation should have provided for a firm, fixed-price contract is denied where there is no evidence that the agency's choice of procurement method was unreasonable.
2. Protest that labor hour quantity estimates in solicitation for repairs are defective because the agency will not guarantee that it will order that number of labor hours is denied where there is no evidence that the estimates are not based on the best information available to the agency and estimates by their nature are speculative and to be used for purposes of evaluation, not as a guarantee as to what services will be ordered during the term of the contract.

DECISION

The Saxon Corporation protests the Air Force's use of other than a firm, fixed-price contract for repair services for ground support equipment at Kelly Air Force Base, Texas, under request for proposals (RFP) Nos. F41608-R-6264, F41608-88-R-6265, F41608-88-R-6266, F41608-88-R-6267, and F41608-88-R-7583. Saxon also complains about the solicitation estimates of the labor hours required and urges that information provided to it by the agency in response to a written request to the contracting officer be given to all offerors.

We deny the protests.

The RFP required offerors to propose a separate firm-fixed-price for the "teardown" or partial disassembly and analysis of each of the various items of ground support equipment. Offerors were also to propose one fixed hourly rate for performing all the repairs identified during the teardown and authorized by the contracting officer. The solicitation

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contained estimates of the hours that would be required to repair all of the items of equipment for each of the base and option years. The actual repair work is to be performed under contract modifications to which the government and the contractor agree as to the number of labor hours required for the particular repair job. The price is then to be set by pricing those hours at the hourly rate set in the contract. Award was to be made to the offeror with the lowest evaluated total price including the prices bid for the teardown and the labor hour price for repairs.

Saxon argues that a firm, fixed-price type contract is most suitable for both the teardown and the repair aspects of this requirement. According to Saxon, since the equipment covered by this contract has been serviced for a number of years, the agency has a clear record of the repair requirements. The protester points to the estimated quantities of labor hours the agency established in the RFP for repair of the equipment as evidence that the Air Force is aware of the volume of work required. Additionally, according to the protester who has been the incumbent on similar repair contracts at Kelly Air Force Base, the agency has in the past negotiated a fixed number of hours for the repair of a number of identical items of equipment. The protester believes this is further evidence of the agency's ability to produce realistic estimates of the probable cost of performance so that a firm, fixed-price contract can be used for both portions of the requirement.^{1/} Finally, Saxon characterizes the solicitation as one for a time and materials or labor hours contract which, according to Federal Acquisition Regulation (FAR) § 16.601(b), may only be used when it is not possible to estimate accurately the extent or duration of the work or to anticipate costs with a reasonable degree of confidence.

The Air Force disagrees, stating that the repair history is insufficient to use a firm, fixed-price type contract for the repair portion of the requirement.

We think that the use of other than a firm, fixed-price contract was valid here. While we recognize that generally fixed-price contracts are more advantageous to the government than cost-reimbursement type contracts, Southwest Marine, Inc., B-204136, July 20, 1982, 82-2 CPD ¶ 60, such contracts are only suitable when they are reasonably definite specifications, performance uncertainties can be identified and reasonable estimates of their cost impact

^{1/} It is clear that the teardown portion of the requirement was solicited on a fixed-price basis.

made. See FAR § 16.202. In this regard, we will not disturb an agency's determination as to what procurement type best suits its needs unless its judgment is clearly unreasonable. Southwest Marine, Inc., B-204136, supra.

The agency states that it did not choose to use a firm, fixed-price contract for the actual repair work because it could not accurately estimate the amount of repair work required for each item or anticipate the costs. The Air Force states that while it did have some historical data on several items of equipment that have been repaired repeatedly, that data has been generated almost exclusively under prior Saxon contracts, most of which were under the same format as used here. The agency argues that repair data generated by one contractor does not necessarily carry over to future contracts that may be performed by different firms. In sum, it is the agency's view that for the majority of the scores of individual items which may need to be repaired it does not have sufficient data on the types and extent of the repairs that will be needed to solicit a firm, fixed-price contract.

The record shows that it is not possible to know the exact number of hours and types of materials needed to repair each of the well over 100 different items covered by the contract until the particular item is disassembled and inspected and the nature of the problem diagnosed. While it may be, as the protester argues, possible to predict generally the number of hours of repair a particular item will need, the agency does not believe--and we have no basis upon which to disagree--that except for a few of the many items, that such predictions are not sufficiently accurate to provide the basis for a fixed repair price to cover all repair eventualities. The protester insists that the available historical repair data is sufficient, but we do not think that under the circumstances where such a large number of repairable items are concerned the protester's rather general objections support a conclusion that the agency's judgment in selecting the contract format was clearly unreasonable. See Southwest, Inc., B-204136, supra.

Further, we do not believe that the fixed-price contract format urged by the protester would enhance competition. First, no other offeror has complained about the solicitation. Second, it appears to us that Saxon, as the incumbent on a number of similar repair contracts, would have under a fixed price format a significant advantage as it would be able to use its experience in proposing a more accurate fixed price than would nonincumbent offerors who would have to rely solely on the accuracy of the government's estimates.

Saxon further complains that it is unfair for the agency to "disavow" the accuracy of the estimated quantities set forth in the solicitation. The protester claims that it is somehow improper for the agency to warn offerors that the estimated repair hours set forth in the solicitation are not guaranteed and that there is no assurance that repairs will be ordered on all of the many items listed. In this regard, the protester demands that the agency establish how it calculated the estimate and assure offerors that it intends to rely on that estimate.

First, the protester seems to be objecting to the use of estimates at all. The agency is merely properly pointing out that the figures in the solicitation are only estimates for evaluation and proposal purposes and that the contractor is obligated to perform the actual number of repair hours needed during the term of the contract. There is, of course, nothing improper or misleading in this.

As far as the accuracy of the estimates is concerned, we have held that when the government solicits offers on the basis of estimated quantities to be used over a given period, the estimates must be compiled from the best information available. They must be a reasonably accurate representation of the anticipated needs, although there is no requirement that they be absolutely correct. Dynalelectron Corp., 65 Comp. Gen. 92 (1985), 85-2 CPD ¶ 634 aff'd on reconsideration, 65 Comp. Gen. 558 (1986), 86-1 CPD ¶ 452.

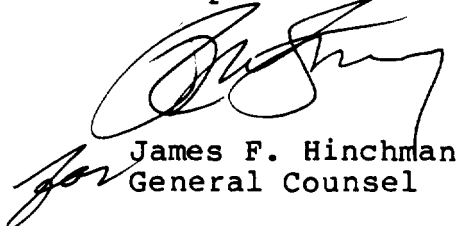
The Air Force maintains that it has used the best historical information available to establish the estimates. The agency states that it reviewed the military specifications, technical orders, past history, personnel knowledge and other supporting documentation to arrive at a reasonable average amount of labor hours that will be needed for the repairs. It stands by the hours listed as accurate estimates but not as guaranteed hours. Saxon offers no evidence to support its allegation that the Air Force used incorrect data in calculating the estimates or that there is anything else wrong with the estimates. We find nothing in this record upon which to base a conclusion that the estimates are improper.

Saxon also argues that copies of a contracting officer letter to it dated September 16 should have been provided to all offerors. The letter stated, among other things, that the agency does not guarantee that it will order any particular number of repair hours or that during contract performance a fixed price will necessarily be assigned to certain repeated repairs as has been done in the past.

Apparently, under previous contracts, a fixed price for some repairs of particular items of equipment was negotiated by Saxon and the agency for equipment items requiring frequent repair. The agency reports that it has provided copies of the letter to all offerors although it claims that this was unnecessary since the letter only outlined operating procedures that the agency has been using for years and that are consistent with the terms of the RFP. The protester, however, argues that releasing copies of the letter after the closing date for receipt of offers is not sufficient since offerors were not submitting proposals on an equal basis. We find that since Saxon received the letter prior to the closing date, it was not prejudiced by the agency's failure to provide copies of the letter to the other offerors. In any event, we agree with the agency that the letter merely reiterates the government's position concerning estimated quantities and guaranteed hours which should be clear from the solicitation terms.

Finally, as the protester notes, there is some doubt as to whether the agency has properly characterized the repair portion of the RFP as contemplating the award of a "requirements contract." The RFP scheme of using contract modifications for each repair job to be priced according to a labor rate set by the contract with reimbursement for materials at costs seems to fit within the definition of a time and materials contract or set forth at FAR § 16.601. In any event, the use of a time and materials format would be proper here where it was not possible to accurately estimate the extent of the work required. See Consolidated Service, Inc. of Charleston, B-199407, Sept. 21, 1981, 81-2 CPD ¶ 228. We think that the agency should review this matter and if it concludes that a time and materials type contract is contemplated it should execute the determination and findings specified by FAR § 16.601(c) and amend the solicitation to include the ceiling price for the repair portion of the contract as also required by FAR § 16.601(c).

The protests are denied.


James F. Hinchman
General Counsel